

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Bright House Networks, LLC)	
)	CSR-6839-E
Petition for Determination of Effective Competition)	
in Two Local Franchise Areas in Florida)	
)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: March 1, 2007

Released: March 2, 2007

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. This Order considers a petition filed with the Commission by Bright House Networks LLC (“Bright House”) pursuant to Sections 76.7, 76.905(b)(1) & (2) and 76.907 of the Commission’s rules for a determination that Bright House’s cable systems serving Pasco County (“Pasco”) and Port Richey, Florida are subject to effective competition pursuant to Section 623(a)(1) of the Communications Act of 1934, as amended (“Communications Act”) and are therefore exempt from cable rate regulation.¹ Pasco County opposed the petition with respect to that franchise area. We grant the petition, finding that the Bright House systems are subject to effective competition in both communities.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,² as the term is defined by Section 623(l) of the Communications Act of 1934, as amended, and Section 76.905 of the Commission’s rules.³ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁴ Pasco argues that Bright House has not met this burden because it failed to demonstrate that residents are aware of DBS service, it submitted incorrect household data, it did not accurately estimate DBS subscribers, and it failed to account for the County’s growth or Bright House’s own “anticompetitive contracts.”⁵

¹ 47 C.F.R. §§ 76.7, 76.905(b)(1) & (2), 76.907; 47 U.S.C. § 543(a)(1).

² 47 C.F.R. § 76.906.

³ See 47 U.S.C. § 543 (l); 47 C.F.R. § 76.905.

⁴ See 47 C.F.R. §§ 76.906 & 907.

⁵ Pasco Opposition at 10.

II. DISCUSSION

3. Section 623 (l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the cable operator demonstrates that its franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors (“MVPD”) each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to the programming services offered by the MVPDs, other than the largest MVPD, exceeds fifteen percent of the households in the franchise area.⁶

4. In analyzing the first prong of the test, DIRECTV Inc. and Dish Network’s DBS service is presumed to be technically available because of its nationwide satellite footprint, and as long as the households in a franchise area are reasonably aware that the service is available, we presume it to be actually available.⁷ Pasco asserts that Bright House failed to present evidence of marketing materials offered by DBS providers in the franchise area.⁸ Bright House replies that such marketing information is unnecessary given the growth in national DBS subscribership and advertising and the DBS penetration in the franchise area.⁹ As of June 2005, DIRECTV and Dish Network provided service to approximately 26.1 million people, comprising approximately 27.7 percent of all MVPD subscribers nationwide. DIRECTV is the second largest MVPD provider, and Dish Network the third largest.¹⁰ Considering the growth of DBS, and the data discussed below showing that these DBS providers serve more than 15 percent of the franchise areas’ population, we conclude that residents of the franchise areas may be deemed reasonably aware of the availability of DBS services for the purpose of the first prong of the competing provider test.¹¹ With regard to program comparability, we find that the DBS providers offer substantially more than 12 channels of video programming, including more than one non-broadcast channel, and that the programming provided by Bright House, DIRECTV, and Dish Network is comparable.¹² Bright House has satisfied the first prong of the “competing provider” test by demonstrating that at least two unaffiliated MVPDs, namely DIRECTV and Dish Network, offer comparable video programming to at least 50 percent of the households in the franchise areas.

5. The second prong of the competing provider test requires that the number of households subscribing to the MVPDs, not including the largest MVPD, exceed 15 percent of the households in a franchise area. The information provided by Bright House illustrates that its subscribership in both franchise areas exceeds the aggregate total subscribership of the DBS and other MVPD providers, thus establishing it as the largest MVPD provider in the franchise areas. Pasco does not dispute this fact.¹³

6. In an effort to prove the second prong of the competing provider test, which requires the DBS providers to penetrate a least 15 percent of the market in the franchise area, Bright House purchased

⁶ 47 U.S.C. § 543 (l)(1)(B); *see also* 47 C.F.R. § 76.905 (b)(2).

⁷ *See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

⁸ Pasco Opposition at 4.

⁹ Bright House Reply at 2.

¹⁰ *Twelfth Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 21 FCC Rcd 2503 at ¶¶ 6, 13, 72-73 (2006).

¹¹ *See e.g. Adelphia Communications et. al*, 20 FCC Rcd. 7503, 7504 (MB 2005).

¹² *See* 47 C.F.R. § 76.905 (g); *see also* Bright House Petition at 6.

¹³ Bright House Petition at 8 and Exhibit A. Pasco Opposition at 2.

a subscriber tracking report from the Satellite Broadcasting and Communications Association (“SCBA”). This report identified the number of subscribers attributable to the DBS providers within the communities on a five digit zip code basis.¹⁴ Bright House used the subscriber count information provided by SCBA in combination with the 2000 U.S. Census household data for the communities and derived an allocation figure to apply to each of the franchise areas.¹⁵ After comparing the allocation figure to the 2000 U.S. Census household data for each community, Bright House calculated a DBS penetration rate of 23.27 percent for Pasco County and 17.23 percent for Port Richey.¹⁶ Pasco challenges Bright House’s figures and calculations with respect to actual occupied households in the county and estimated DBS subscribers.¹⁷ Pasco asserts that Bright House’s data is flawed because it shows that there are more county households subscribing to MVPD services than there are total county households as reflected in the 2000 Census figures.¹⁸ Pasco also challenges Bright House’s use of 5 digit overlapping zip code information.¹⁹ In reply, Bright House states that the existence of seasonal, recreational or occasional use residences together with population growth in the county can explain the discrepancy in the number of households.²⁰ It also indicates that the Commission has accepted overlapping five digit zip code information when such information was adjusted by an acceptable allocation methodology.²¹ In any event, Bright House argues that under alternative calculations proposed by Pasco, the figures continue to indicate a DBS penetration rate in excess of 15 percent, specifically 22 or 22.58 percent, and thus, under all of the circumstances suggested by Pasco, effective competition exists.²²

7. Bright House has satisfied the first prong of the competing provider test, by demonstrating that the DBS providers offer comparable programming to at least fifty percent of the franchise areas. In addition, we find that Bright House has satisfied the second prong of the competing provider test by establishing that the DBS providers serve at least 15 percent of households in the franchise areas. The methodology used by Bright House has been accepted by the Commission in previous cases.²³ Further, even given the alternatives offered by Pasco to exclude certain zip codes in that franchise area, Bright House has offered evidence to show that the DBS penetration rate is greater than 15 percent.²⁴ Based on the foregoing, we conclude that Bright House has submitted sufficient evidence demonstrating that its cable systems serving the franchise areas of Pasco County and Port Richey, Florida

¹⁴ Bright House Petition at 8.

¹⁵ *Id.*

¹⁶ Bright House Petition at 9.

¹⁷ Pasco Opposition 4-9.

¹⁸ Pasco Opposition at 3.

¹⁹ Pasco Opposition at 5-9. Pasco also argues that Bright House should have used updated information as to the number of county households and that it should have taken into account that many new housing developments are subject to exclusive cable contracts through homeowners associations and multiple dwelling unit arrangements. Without specific evidence in the record regarding community restrictions, we will not require a reduction in the number of households in the franchise area. *Adelphia Cable Communications*, 20 FCC Rcd 4979, 4981 (MB 2005).

²⁰ Bright House Reply at 7.

²¹ *Id.* at 3-6.

²² Bright House Reply at 6-7. Bright House performed alternative calculations based on Pasco’s objections to certain zip code inclusion and produced two alternative scenarios.

²³ *See Time Warner-Advance/Newhouse Partnership, d/b/a Time Warner*, 20 FCC Rcd 5225, 5227 (MB 2005).

²⁴ Bright House Reply at Exhibit 1.

are subject to “competing provider” effective competition.

III. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that the petition filed by Bright House for a determination of effective competition in Pasco County and Port Richey, Florida **IS GRANTED**.

9. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates of Pasco County and Port Richey, Florida **ARE REVOKED**.

10. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission’s rules.²⁵

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker
Deputy Chief, Policy Division, Media Bureau

²⁵ 47 C.F.R. § 0.283.